

1 RANDOLPH GAW (S.B. #223718)

[rgaw@gawpoe.com](mailto:rgaw@gawpoe.com)

2 FLORA VIGO (S.B. #239643)

[fvigo@gawpoe.com](mailto:fvigo@gawpoe.com)

3 GAW | POE LLP

4 Embarcadero, Suite 1400

4 San Francisco, CA 94111

Telephone: (415) 766-7451

5 Facsimile: (415) 737-0642

6 Attorneys for Plaintiff Silvaco, Inc.

7 DAVID R. BURTT (S.B. #201220)

[dburt@mobilitylegal.com](mailto:dburt@mobilitylegal.com)

8 MOBILITY LEGAL P.C.

3464 Arivaca Ct.

9 Reno, NV 89511

Telephone: (510) 208-1909

10 Attorneys for Defendants

11 GLIDING EAGLE, INC. and JACK DUAN

12 CHRISTIAN N. BROWN (S.B. #233147)

[chris@elevationlawfirm.com](mailto:chris@elevationlawfirm.com)

13 ELEVATION LAW P.C.

855 N. Lake Blvd., P.O. Box 5008

14 Tahoe City, CA 96145

Telephone: (530) 584-2900

15 Attorneys for Defendant

16 LEI WANG

17 **UNITED STATES DISTRICT COURT**

18 **NORTHERN DISTRICT OF CALIFORNIA**

19 **SAN JOSE DIVISION**

20 SILVACO, INC., a Delaware Corporation

21 Plaintiff,

22 v.

23 GLIDING EAGLE INC., a California  
24 Corporation; JACK DUAN, individually  
25 and in his official capacity as Chief  
26 Executive Officer of GLIDING EAGLE  
INC.; and LEI WANG, an individual.

27 Defendants.  
28

Case No. 5:18-cv-07135-SVK

**STIPULATED PROTECTIVE ORDER**

1     **1.     PURPOSES AND LIMITATIONS**

2             Disclosure and discovery activity in this action are likely to involve production of  
3 confidential, proprietary, or private information for which special protection from public  
4 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.  
5 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated  
6 Protective Order. The parties acknowledge that this Order does not confer blanket protections on  
7 all disclosures or responses to discovery and that the protection it affords from public disclosure  
8 and use extends only to the limited information or items that are entitled to confidential treatment  
9 under the applicable legal principles. The parties further acknowledge, as set forth in Section  
10 14.4, below, that this Stipulated Protective Order does not entitle them to file confidential  
11 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and  
12 the standards that will be applied when a party seeks permission from the court to file material  
13 under seal.

14     **2.     DEFINITIONS**

15             2.1     Challenging Party: a Party or Non-Party that challenges the designation of  
16 information or items under this Order.

17             2.2     “CONFIDENTIAL” Information or Items: information (regardless of how it is  
18 generated, stored, or maintained) or tangible things that qualify for protection under Federal Rule  
19 of Civil Procedure 26(c).

20             2.3     Counsel (without qualifier): Outside Counsel of Record and House Counsel (as  
21 well as their support staff).

22             2.4     Designated House Counsel: House Counsel who seek access to “HIGHLY  
23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

24             2.5     Designating Party: a Party or Non-Party that designates information or items that it  
25 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY  
26 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE  
27 CODE.”  
28

1           2.6    Disclosure or Discovery Material: all items or information, regardless of the  
2 medium or manner in which it is generated, stored, or maintained (including, among other things,  
3 testimony, transcripts, and tangible things), that are produced or generated in disclosures or  
4 responses to discovery in this matter.

5           2.7    Expert: a person with specialized knowledge or experience in a matter pertinent to  
6 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or  
7 as a consultant in this action, (2) is not a past or current employee of a Party or of a Party's  
8 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party  
9 or of a Party's competitor.

10          2.8    "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or  
11 Items: extremely sensitive "Confidential Information or Items," disclosure of which to another  
12 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by  
13 less restrictive means.

14          2.9    "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items:  
15 extremely sensitive "Confidential Information or Items" representing computer code and  
16 associated comments and revision histories, formulas, engineering specifications, or schematics  
17 that define or otherwise describe in detail the algorithms or structure of software or hardware  
18 designs, disclosure of which to another Party or Non-Party would create a substantial risk of  
19 serious harm that could not be avoided by less restrictive means.

20          2.10   House Counsel: attorneys who are employees of a party to this action. House  
21 Counsel does not include Outside Counsel of Record or any other outside counsel.

22          2.11   Non-Party: any natural person, partnership, corporation, association, or other legal  
23 entity not named as a Party to this action.

24          2.12   Outside Counsel of Record: attorneys who are not employees of a party to this  
25 action but are retained to represent or advise a party to this action and have appeared in this action  
26 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

27          2.13   Party: any party to this action, including all of its officers, directors, employees,  
28 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

1           2.14    Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
2 Material in this action.

3           2.15    Professional Vendors: persons or entities that provide litigation support services  
4 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
5 organizing, storing, or retrieving data in any form or medium) and their employees and  
6 subcontractors.

7           2.16    Protected Material: any Disclosure or Discovery Material that is designated as  
8 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or as  
9 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

10          2.17    Receiving Party: a Party that receives Disclosure or Discovery Material from a  
11 Producing Party.

12    **3.     SCOPE**

13    The protections conferred by this Stipulation and Order cover not only Protected Material (as  
14 defined above), but also (1) any information copied or extracted from Protected Material; (2) all  
15 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
16 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

17    However, the protections conferred by this Stipulation and Order do not cover the following  
18 information: (a) any information that is in the public domain at the time of disclosure to a  
19 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as  
20 a result of publication not involving a violation of this Order, including becoming part of the  
21 public record through trial or otherwise; and (b) any information known to the Receiving Party  
22 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who  
23 obtained the information lawfully and under no obligation of confidentiality to the Designating  
24 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

25    **4.     DURATION**

26    Even after final disposition of this litigation, the confidentiality obligations imposed by this Order  
27 shall remain in effect until a Designating Party agrees otherwise in writing or a court order  
28

1 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims  
2 and defenses in this action, with or without prejudice; and (2) final judgment herein after the  
3 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,  
4 including the time limits for filing any motions or applications for extension of time pursuant to  
5 applicable law.

## 6 **5. DESIGNATING PROTECTED MATERIAL**

7 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party  
8 or Non-Party that designates information or items for protection under this Order must take care  
9 to limit any such designation to specific material that qualifies under the appropriate standards.  
10 To the extent it is practical to do so, the Designating Party must designate for protection only  
11 those parts of material, documents, items, or oral or written communications that qualify – so that  
12 other portions of the material, documents, items, or communications for which protection is not  
13 warranted are not swept unjustifiably within the ambit of this Order.

14 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
15 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to  
16 unnecessarily encumber or retard the case development process or to impose unnecessary  
17 expenses and burdens on other parties) expose the Designating Party to sanctions.

18 If it comes to a Designating Party's attention that information or items that it designated  
19 for protection do not qualify for protection at all or do not qualify for the level of protection  
20 initially asserted, that Designating Party must promptly notify all other parties that it is  
21 withdrawing the mistaken designation.

22 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order  
23 (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,  
24 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so  
25 designated before the material is disclosed or produced.

26 Designation in conformity with this Order requires:

27 (a) for information in documentary form (*e.g.*, paper or electronic documents, but  
28 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing

1 Party affix the legend “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’  
2 EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE” to at least the first page of  
3 each document that contains protected material.

4 A Party or Non-Party that makes original documents or materials available for inspection  
5 need not designate them for protection until after the inspecting Party has indicated which  
6 material it would like copied and produced. During the inspection and before the designation, all  
7 of the material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –  
8 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants  
9 copied and produced, the Producing Party must determine which documents, or portions thereof,  
10 qualify for protection under this Order. Then, before producing the specified documents, the  
11 Producing Party must affix the appropriate legend (“CONFIDENTIAL,” “HIGHLY  
12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE  
13 CODE”) to each page that contains Protected Material.

14 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
15 Designating Party identify on the record, before the close of the deposition, hearing, or other  
16 proceeding, all protected testimony and specify the level of protection being asserted. When it is  
17 impractical to identify separately each portion of testimony that is entitled to protection and it  
18 appears that substantial portions of the testimony may qualify for protection, the Designating  
19 Party may invoke on the record (before the deposition, hearing, or other proceeding is concluded)  
20 a right to have up to 14 days from receipt of the rough transcript to identify the specific portions  
21 of the testimony as to which protection is sought and to specify the level of protection being  
22 asserted. Only those portions of the testimony that are appropriately designated for protection  
23 within the 14 days shall be covered by the provisions of this Stipulated Protective Order.  
24 Alternatively, a Designating Party may specify, at the deposition or up to 14 days afterwards if  
25 that period is properly invoked, that the entire transcript shall be treated as “CONFIDENTIAL,”  
26 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL  
27 – SOURCE CODE.”

28 Parties shall give the other parties notice if they reasonably expect a deposition, hearing,

1 or other proceeding to include Protected Material so that the other parties can ensure that only  
2 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”  
3 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition  
4 shall not in any way affect its designation as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL –  
5 ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.”

6 Transcripts containing Protected Material shall have an obvious legend on the title page  
7 that the transcript contains Protected Material, and the title page shall be followed by a list of all  
8 pages (including line numbers as appropriate) that have been designated as Protected Material and  
9 the level of protection being asserted by the Designating Party. The Designating Party shall  
10 inform the court reporter of these requirements. Any transcript that is prepared before the  
11 expiration of a 14-day period for designation shall be treated during that period as if it had been  
12 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless  
13 otherwise agreed. After the expiration of that period, the transcript shall be treated only as  
14 actually designated.

15 (c) for information produced in some form other than documentary and for any other  
16 tangible items, that the Producing Party affix in a prominent place on the exterior of the container  
17 or containers in which the information or item is stored the legend “CONFIDENTIAL,”  
18 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL  
19 – SOURCE CODE.” If only a portion or portions of the information or item warrant protection,  
20 the Producing Party, to the extent practicable, shall identify the protected portion(s) and specify  
21 the level of protection being asserted.

22 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
23 designate qualified information or items does not, standing alone, waive the Designating Party’s  
24 right to secure protection under this Order for such material. Upon timely correction of a  
25 designation, the Receiving Party must make reasonable efforts to assure that the material is  
26 treated in accordance with the provisions of this Order.

1       **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2           6.1     Timing of Challenges. Any Party or Non-Party may challenge a designation of  
3 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality  
4 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
5 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to  
6 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
7 original designation is disclosed.

8           6.2     Meet and Confer. The Challenging Party shall initiate the dispute resolution  
9 process by providing written notice of each designation it is challenging and describing the basis  
10 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written  
11 notice must recite that the challenge to confidentiality is being made in accordance with this  
12 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in  
13 good faith and must begin the process by conferring directly (in voice to voice dialogue; other  
14 forms of communication are not sufficient) within 3 days of the date of service of notice. In  
15 conferring, the Challenging Party must explain the basis for its belief that the confidentiality  
16 designation was not proper and must give the Designating Party an opportunity to review the  
17 designated material, to reconsider the circumstances, and, if no change in designation is offered,  
18 to explain the basis for the chosen designation. A Challenging Party may proceed to the next  
19 stage of the challenge process only if it has engaged in this meet and confer process first or  
20 establishes that the Designating Party is unwilling to participate in the meet and confer process in  
21 a timely manner.

22           6.3     Judicial Intervention. If the Parties cannot resolve a challenge without court  
23 intervention, the Designating Party shall file and serve a motion to retain confidentiality under  
24 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) or the Court's  
25 standing order for discovery disputes within 7 days of the initial notice of challenge or within 5  
26 days of the parties agreeing that the meet and confer process will not resolve their dispute,  
27 whichever is earlier. Each such motion must be accompanied by a competent declaration  
28



1 affirming that the movant has complied with the meet and confer requirements imposed in the  
2 preceding paragraph. Failure by the Designating Party to make such a motion including the  
3 required declaration within 7 days (or 5 days, if applicable) shall automatically waive the  
4 confidentiality designation for each challenged designation. In addition, the Challenging Party  
5 may file a motion challenging a confidentiality designation at any time if there is good cause for  
6 doing so, including a challenge to the designation of a deposition transcript or any portions  
7 thereof. Any motion brought pursuant to this provision must be accompanied by a competent  
8 declaration affirming that the movant has complied with the meet and confer requirements  
9 imposed by the preceding paragraph.

10 The burden of persuasion in any such challenge proceeding shall be on the Designating  
11 Party. Frivolous challenges and those made for an improper purpose (*e.g.*, to harass or impose  
12 unnecessary expenses and burdens on other parties) may expose the Challenging Party to  
13 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to  
14 file a motion to retain confidentiality as described above, all parties shall continue to afford the  
15 material in question the level of protection to which it is entitled under the Producing Party's  
16 designation until the court rules on the challenge.

## 17 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

18 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
19 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
20 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to  
21 the categories of persons and under the conditions described in this Order. When the litigation has  
22 been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL  
23 DISPOSITION).

24 Protected Material must be stored and maintained by a Receiving Party at a location and  
25 in a secure manner that ensures that access is limited to the persons authorized under this Order.

26 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered  
27 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
28

1 information or item designated “CONFIDENTIAL” only to:

2 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees  
3 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information  
4 for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that  
5 is attached hereto as Exhibit A;

6 (b) Receiving Party, including, as applicable, the officers, directors, and employees  
7 (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for  
8 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit  
9 A);

10 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
11 reasonably necessary for this litigation and who have signed the “Acknowledgment and  
12 Agreement to Be Bound” (Exhibit A);

13 (d) the court and its personnel;

14 (e) court reporters and their staff, professional jury or trial consultants, and Professional  
15 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the  
16 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

17 (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
18 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),  
19 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed  
20 deposition testimony or exhibits to depositions that reveal Protected Material must be separately  
21 bound by the court reporter and may not be disclosed to anyone except as permitted under this  
22 Stipulated Protective Order.

23 (g) the author or recipient of a document containing the information or a custodian or  
24 other person who otherwise possessed or knew the information.

25 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and  
26 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise  
27 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
28 disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’

1 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

2 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees  
3 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information  
4 for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that  
5 is attached hereto as Exhibit A;

6 (b) Designated House Counsel of the Receiving Party (1) who has no involvement in  
7 competitive decision-making, (2) to whom disclosure is reasonably necessary for this litigation,  
8 (3) who has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (4) as to  
9 whom the procedures set forth in paragraph 7.4(a)(1), below, have been followed;

10 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this  
11 litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),  
12 and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed;

13 (d) the court and its personnel;

14 (e) court reporters and their staff, professional jury or trial consultants, and Professional  
15 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the  
16 “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

17 (f) the author or recipient of a document containing the information or a custodian or other  
18 person who otherwise possessed or knew the information. It is acknowledged that Defendant Lei  
19 Wang is the author/and or recipient of the files/code claimed as trade secrets by Plaintiff Silvaco,  
20 Inc. in this action, or is otherwise a person who possessed or knew such information, and that he  
21 transmitted the information claimed as trade secrets by Plaintiff Silvaco, Inc. to Defendant  
22 Gliding Eagle Inc. or that Gliding Eagle otherwise possessed or knew the information.

23 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL  
24 – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”  
25 Information or Items to Designated House Counsel or Experts.

26 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating  
27 Party, a Party that seeks to disclose to Designated House Counsel any information or item that has  
28 been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY

1 CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.3(b) first must make a written  
2 request to the Designating Party that (1) sets forth the full name of the Designated House Counsel  
3 and the city and state of his or her residence, and (2) describes the Designated House Counsel’s  
4 current and reasonably foreseeable future primary job duties and responsibilities in sufficient  
5 detail to determine if House Counsel is involved, or may become involved, in any competitive  
6 decision-making.

7 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating  
8 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item  
9 that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or  
10 “HIGHLY CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.3(c) first must make a  
11 written request to the Designating Party that (1) identifies the general categories of “HIGHLY  
12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE  
13 CODE” information that the Receiving Party seeks permission to disclose to the Expert, (2) sets  
14 forth the full name of the Expert and the city and state of his or her primary residence, (3)  
15 attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5)  
16 identifies each person or entity from whom the Expert has received compensation or funding for  
17 work in his or her areas of expertise or to whom the expert has provided professional services,  
18 including in connection with a litigation, at any time during the preceding five years, and (6)  
19 identifies (by name and number of the case, filing date, and location of court) any litigation in  
20 connection with which the Expert has offered expert testimony, including through a declaration,  
21 report, or testimony at a deposition or trial, during the preceding five years.

22 (b) A Party that makes a request and provides the information specified in the preceding  
23 respective paragraphs may disclose the subject Protected Material to the identified Designated  
24 House Counsel or Expert unless, within 7 days of delivering the request, the Party receives a  
25 written objection from the Designating Party. Any such objection must set forth in detail the  
26 grounds on which it is based.

27 (c) A Party that receives a timely written objection must meet and confer with the  
28 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by

1 agreement within 5 days of the written objection. If no agreement is reached, the Party seeking to  
2 make the disclosure to Designated House Counsel or the Expert may file a motion as provided in  
3 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) seeking  
4 permission from the court to do so. Any such motion must describe the circumstances with  
5 specificity, set forth in detail the reasons why the disclosure to Designated House Counsel or the  
6 Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and  
7 suggest any additional means that could be used to reduce that risk. In addition, any such motion  
8 must be accompanied by a competent declaration describing the parties' efforts to resolve the  
9 matter by agreement (*i.e.*, the extent and the content of the meet and confer discussions) and  
10 setting forth the reasons advanced by the Designating Party for its refusal to approve the  
11 disclosure.

12 In any such proceeding, the Party opposing disclosure to Designated House Counsel or the  
13 Expert shall bear the burden of proving that the risk of harm that the disclosure would entail  
14 (under the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected  
15 Material to its Designated House Counsel or Expert.

16 **9. SOURCE CODE**

17 (a) To the extent production of source code becomes necessary in this case, a  
18 Producing Party may designate source code as "HIGHLY CONFIDENTIAL - SOURCE CODE"  
19 if it comprises or includes confidential, proprietary, or trade secret source code.

20 (b) Protected Material designated as "HIGHLY CONFIDENTIAL – SOURCE  
21 CODE" shall be subject to all of the protections afforded to "HIGHLY CONFIDENTIAL –  
22 ATTORNEYS' EYES ONLY" information, and may be disclosed only to the individuals to  
23 whom "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information may be  
24 disclosed, as set forth in Paragraphs 7.3 and 7.4.

25 (c) Any source code produced in discovery shall be made available for inspection in a  
26 format through which it could be reasonably reviewed and searched during normal business hours  
27 or other mutually agreeable times at a location that is reasonably convenient for the Receiving  
28

1 Party and any experts to whom the source code may be disclosed. The source code shall be made  
2 available for inspection on a secured computer in a secured room without Internet access or  
3 network access to other computers, and the Receiving Party shall not copy, remove, or otherwise  
4 transfer any portion of the source code onto any recordable media or recordable device. The  
5 Producing Party may visually monitor the activities of the Receiving Party's representatives  
6 during any source code review, but only to ensure that there is no unauthorized recording,  
7 copying, or transmission of the source code.

8 (d) The Receiving Party may request paper copies of limited portions of source code  
9 that are reasonably necessary for the preparation of court filings, pleadings, expert reports, or  
10 other papers, or for deposition or trial, but shall not request paper copies for the purposes of  
11 reviewing the source code other than electronically as set forth in paragraph (c) in the first  
12 instance. The Producing Party shall provide all such source code in paper form including bates  
13 numbers and the label "HIGHLY CONFIDENTIAL - SOURCE CODE." The Producing Party  
14 may challenge the amount of source code requested in hard copy form pursuant to the dispute  
15 resolution procedure and timeframes set forth in Paragraph 6 whereby the Producing Party is the  
16 "Challenging Party" and the Receiving Party is the "Designating Party" for purposes of dispute  
17 resolution.

18 (e) The Receiving Party shall maintain a record of any individual who has inspected  
19 any portion of the source code in electronic or paper form. The Receiving Party shall maintain all  
20 paper copies of any printed portions of the source code in a secured, locked area. The Receiving  
21 Party shall not create any electronic or other images of the paper copies and shall not convert any  
22 of the information contained in the paper copies into any electronic format. The Receiving Party  
23 shall only make additional paper copies if such additional copies are (1) necessary to prepare  
24 court filings, pleadings, or other papers (including a testifying expert's expert report), (2)  
25 necessary for deposition, or (3) otherwise necessary for the preparation of its case. Any paper  
26 copies used during a deposition shall be retrieved by the Producing Party at the end of each day  
27 and must not be given to or left with a court reporter or any other unauthorized individual.  
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1       **10.           PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**  
2       **IN OTHER LITIGATION**

3           If a Party is served with a subpoena or a court order issued in other litigation that compels  
4 disclosure of any information or items designated in this action as “CONFIDENTIAL,”  
5 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL  
6 – SOURCE CODE,” that Party must:

7           (a) promptly notify in writing the Designating Party. Such notification shall include a  
8 copy of the subpoena or court order;

9           (b) promptly notify in writing the party who caused the subpoena or order to issue in the  
10 other litigation that some or all of the material covered by the subpoena or order is subject to this  
11 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

12           (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
13 Designating Party whose Protected Material may be affected.

14           If the Designating Party timely seeks a protective order, the Party served with the  
15 subpoena or court order shall not produce any information designated in this action as  
16 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or  
17 “HIGHLY CONFIDENTIAL – SOURCE CODE” before a determination by the court from  
18 which the subpoena or order issued, unless the Party has obtained the Designating Party’s  
19 permission. The Designating Party shall bear the burden and expense of seeking protection in that  
20 court of its confidential material – and nothing in these provisions should be construed as  
21 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from  
22 another court.

23       **11.           A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**  
24       **PRODUCED IN THIS LITIGATION**

25           (a)     The terms of this Order are applicable to information produced by a Non-Party in  
26 this action and designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL –  
27 ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” Such  
28 information produced by Non-Parties in connection with this litigation is protected by the



remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

1. promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

3. make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 5 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

## **12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.



1       **13.           INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
2       **PROTECTED MATERIAL**

3           When a Producing Party gives notice to Receiving Parties that certain inadvertently  
4       produced material is subject to a claim of privilege or other protection, the obligations of the  
5       Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
6       provision is not intended to modify whatever procedure may be established in an e-discovery  
7       order that provides for production without prior privilege review. Pursuant to Federal Rule of  
8       Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a  
9       communication or information covered by the attorney-client privilege or work product  
10      protection, the parties may incorporate their agreement in the stipulated protective order  
11      submitted to the court.

12      **14.       MISCELLANEOUS**

13           14.1   Right to Further Relief. Nothing in this Order abridges the right of any person to  
14      seek its modification by the court in the future.

15           14.2   Right to Assert Other Objections. By stipulating to the entry of this Protective  
16      Order no Party waives any right it otherwise would have to object to disclosing or producing any  
17      information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
18      Party waives any right to object on any ground to use in evidence of any of the material covered  
19      by this Protective Order.

20           14.4   Filing Protected Material. Without written permission from the Designating Party  
21      or a court order secured after appropriate notice to all interested persons, a Party may not file in  
22      the public record in this action any Protected Material. A Party that seeks to file under seal any  
23      Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed  
24      under seal pursuant to a court order authorizing the sealing of the specific Protected Material at  
25      issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request  
26      establishing that the Protected Material at issue is privileged, protectable as a trade secret, or  
27      otherwise entitled to protection under the law. If a Receiving Party's request to file Protected  
28      Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the court, then the

Receiving Party may file the Protected Material in the public record pursuant to Civil Local Rule 79-5(e)(2) unless otherwise instructed by the court.

**15. FINAL DISPOSITION**

Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: August 13, 2019

GAW | POE LLP

By /s/ Flora Vigo

Flora Vigo

Attorneys for Plaintiff Silvaco, Inc.

I hereby attest that I have on file all holographic signatures corresponding to any signatures indicated by a conformed signature (/S/) within this e-filed document.

DATED: August 13, 2019

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By /s/ David R. Burt  
David R. Burt  
Attorneys for Defendants Gliding Eagle Inc. and  
Jack Duan

DATED: August 13, 2019

ELEVATION LAW P.C.

By /s/ Christian N. Brown  
Christian N. Brown  
Attorneys for Defendant Lei Wang

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: August 16, 2019

  
\_\_\_\_\_  
Honorable Susan Van Keulen  
United States ~~District~~/Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
4 [print or type full address], declare under penalty of perjury that I have read in its entirety and  
5 understand the Stipulated Protective Order that was issued by the United States District Court for  
6 the Northern District of California on [date] in the case of \_\_\_\_\_ **[insert formal name of**  
7 **the case and the number and initials assigned to it by the court]**. I agree to comply with and to  
8 be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge  
9 that failure to so comply could expose me to sanctions and punishment in the nature of contempt.  
10 I solemnly promise that I will not disclose in any manner any information or item that is subject  
11 to this Stipulated Protective Order to any person or entity except in strict compliance with the  
12 provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the  
14 Northern District of California for the purpose of enforcing the terms of this Stipulated Protective  
15 Order, even if such enforcement proceedings occur after termination of this action.

16 I hereby appoint \_\_\_\_\_ [print or type full name] of  
17 \_\_\_\_\_ [print or type full address and telephone  
18 number] as my California agent for service of process in connection with this action or any  
19 proceedings related to enforcement of this Stipulated Protective Order.

20  
21 Date: \_\_\_\_\_

22 City and State where sworn and signed: \_\_\_\_\_

23 Printed name: \_\_\_\_\_  
24 [printed name]

25 Signature: \_\_\_\_\_  
26 [signature]